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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

The Florida Bar File No.
91-50,147 (17C)

Supreme Court Case No.
76,460

KENNETH P. LIROFF, :

Petitioner/Appellant, :

VS. :

THE FLORIDA BAR, :

Respondent/Appellee. :

_____ :

REPLY BRIEF OF KENNETH P. LIROFF

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STATEMENT OF FACTS

Appellant continues to rely upon his statement of facts in his initial brief.

SUMMARY OF ARGUMENT

Appellant continues to rely upon his summary of argument in his initial brief.

ARGUMENT

The Bar's "opinion" that Appellant has not "complied" because he is "in denial" and his "continued addiction" are all similarly without basis in fact. The evidence of "denial", according to Appellee lies in Appellant's own admission that he had ingested "the very drug that had bedeviled him". In fact, the Appellant had ingested that drug knowing that he was also taking a masking device that dulled or eliminated its effect, at the direction and with the acquiescence of a personal physician, and when it proved ineffective (as Appellant had predicted), he ceased the medication.

The conclusion of addiction, made by Appellee is not only NOT borne out by evidence, it is contra indicated. Appellant hardly suggests, as Appellee states at page six of his Answer Brief:

" . . . but, rather, upon an attempt to convince the Court that his experts are better than those of the bar not why or how the bar's evidence failed to support the referee's conclusions." (Emphasis supplied).

Nothing could be further from the facts. The facts are that several health care professionals, and the Bar's own monitor opined that, either Appellant was not addicted and not subject to effective in-house treatment, or, as in the letter of Mr. Stanaway:

(d) . . . (Appellant) has dealt with his chemical dependency in a reasonable manner; and
(e) . . . never seen (Appellant) under the influence nor . . . ever suspected that Appellant was under the influence"
Appendix 4, Appellant's Initial Brief (emphasis added).

This testimonial comes from the monitor who actually is dealing with Appellant on an everyday basis. Mr. Kilby, the F.L.A.

director, gets reports and makes conclusions from them. It should further be noted that "backsliding" is an expected tremor in the recovery process. Appellant's honesty of reporting such infractions to F.L.A., or such usages, is now being turned against him when that is the very purpose of F.L.A. to secure that honesty and turn it to effective use.

Appellant's thrust is NOT "my doctors are better than yours". Appellee has either health care professionals, or direct observations by people who are in a position to know. They have Mr. Kilby who concludes from sources about whom he has no personal knowledge -- well-meaning, but insufficient to overcome Appellant's compelling proof to the contrary.

Proof of misconduct to warrant discipline is not clear and convincing in this cause [The Florida Bar v. Quick, 279 So.2d 4 (Fla. 1973); The Florida Bar v. McClure, 575 So.2d 176 (Fla. 1991); The Florida Bar v. Rayman, 238 So.2d 594 (Fla. 1970).] On the basis of the record herein, the referee's findings are lacking in that evidentiary support. The Florida Bar v. Wagner, 212 So.2d 770 (Fla. 1968); The Florida Bar v. McClure, supra; (Fla. 1987); RRFB 3-7.5(k)(1), and thus is not "legally sufficient" [The Florida Bar v. Abramson, 199 So.2d 457, 460 (Fla. 1967)] to support the discipline recommended.

CONCLUSION

The Court is urged to reject the recommended discipline herein, and discharge Appellant to continue with his rehabilitation without the suspension or treatment facility imposed.

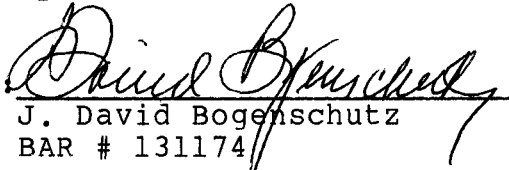
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to David M. Barnovitz, Esq., Assistant Staff Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Fort Lauderdale, FL 33309; Linda Amidon, Esq., Bar Counsel, The Florida Bar, 5900 North Andrews Avenue, Suite 835, Fort Lauderdale, FL 33309; John T. Berry, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300; and John F. Harkness, Jr., Esq., Executive Director, The Florida Bar, 650 Apalachee Parkway, Tallahassee, FL 32399-2300, this 4th day of May, 1991.

Respectfully submitted,

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